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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

CAROLYN COHEN et al.,

Plaintiffs and Respondents,

v.

KABBALAH CENTRE INTERNATIONAL,
INC., et al.,

Defendants and Appellants.

B258226

(Los Angeles County
Super. Ct. No. BC528979)

RANDI WAX, et al.,

Plaintiffs and Respondents,

v.

KABBALAH CENTRE INTERNATIONAL,
INC., et al.,

Defendants and Appellants.

B258231

(Los Angeles County
Super. Ct. No. BC528980)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Richard L. Fruin, Jr., Judge; Ruth A. Kwan, Judge. Affirmed.

Polsinelli LLP, Noel S. Cohen and J. Alan Warfield for Defendants and
Appellants.

Law Offices of Alain V. Bonavida and Alain V. Bonavida for Plaintiffs and
Respondents.

The anti-SLAPP statute, Code of Civil Procedure section 425.16, authorizes a defendant sued for an act in furtherance of the defendant's right of petition or free speech in connection with a public issue to pursue a special motion to strike.¹ In this case, plaintiffs made contributions to a charitable organization for a specific purpose. When the organization ultimately did not pursue that purpose, it did not return the plaintiffs' donations. The plaintiffs then sued the organization and several individuals associated with it, alleging fraud, breach of contract, and related causes of action.² The issue raised by this appeal is whether the claims brought by the plaintiffs do, in fact, arise from acts of the organization in furtherance of its right to free speech in connection with a public issue. We conclude that they do not, and therefore affirm the denials of the anti-SLAPP motions in both cases.

FACTUAL AND PROCEDURAL BACKGROUND

The relevant facts in the two cases are nearly identical, and largely undisputed. Defendants are Kabbalah Centre International, Inc.; Kabbalah Enterprises, Inc.; Kabbalah Centres of the United States, Inc.; Spirituality for Kids, International, Inc.; Kabbalah Children's Academy; Yehuda Berg; Michael Berg; Karen Berg; Yosef Shvili; and Esther Shvili (collectively, Kabbalah Centre or Centre). The plaintiffs in one action are Carolyn Cohen and her wholly-owned corporation, Here We Grow, Inc. (collectively, Cohen); and, in the other, Randi Wax, her husband, Charles, and their wholly-owned limited liability company, Chaya, LLC (collectively, Wax).

Cohen and Wax each became involved in spiritual activities at Kabbalah Centre's San Diego location. At the time, the Centre did not have a permanent location in San Diego. The Centre solicited contributions from Cohen and Wax for a Building Fund, the purpose of which was to either purchase or build a permanent home for Kabbalah Centre

¹ SLAPP is an acronym for Strategic Lawsuit Against Public Participation. Unless otherwise indicated, all statutory references are to the Code of Civil Procedure.

² The plaintiffs brought two separate lawsuits, which resulted in two separate appeals. We have consolidated them for the purposes of argument and decision.

in San Diego. Over a period of years, Cohen and Wax each donated hundreds of thousands of dollars to the Building Fund. Cohen provided over \$450,000 beginning in 2004. Wax donated over \$300,000, beginning in 2006.

In 2013, Kabbalah Centre informed some of its Building Fund donors – but not Cohen and Wax – that it would not, in fact, be purchasing or constructing a building in San Diego. It asked those contacted donors for approval to use their Building Fund contributions for other Kabbalah Centre purposes. When Cohen learned that the Building Fund’s purpose would not be accomplished, she asked for her money to be returned. Kabbalah Centre refused. Wax did not specifically ask for her money back before filing suit; she was waiting to see if the Centre would ask for her approval to use the funds for other purposes.

On November 27, 2013, Cohen and Wax each filed suit alleging the same ten causes of action.³ While the causes of action vary, each one is based on allegations that either: (1) the Centre’s promise that Building Fund donations would go to the Building Fund *was subsequently broken* (breach of contract and breach of the implied covenant of good faith and fair dealing); or (2) that promise was *false when made* (fraud, constructive fraud, conversion, negligent misrepresentation, negligence by fiduciary’s fraud, breach of fiduciary duty, unfair business practices, and obtaining property by false pretense).

On January 21, 2014, Kabbalah Centre filed anti-SLAPP motions in each case. “To determine whether a cause of action should be stricken under the anti-SLAPP statute, section 425.16 establishes a two-part test. Under the first part, the party bringing the motion has the initial burden of showing that the cause of action arises from an act in

³ The one difference between the suits relates to Spirituality for Kids, another Kabbalah Centre program for which the Centre solicited funds from both Cohen and Wax. Cohen seeks return of her contributions to Spirituality for Kids on the same basis she seeks return of her contributions to the Building Fund – the Spirituality for Kids program was terminated; Cohen believes Kabbalah Centre used her Spirituality for Kids contributions for unrelated purposes. While Wax also donated to Spirituality for Kids, she does not seek return of those contributions. As Cohen’s theory of relief with respect to her donations to Spirituality for Kids is identical to her theory with respect to the Building Fund, our analysis of the latter applies equally to the former.

furtherance of the right of free speech or petition—i.e., that it arises from a protected activity. [Citation.] Once the defendant has met its burden, the burden shifts to the plaintiff to demonstrate a probability of prevailing on the cause of action. [Citation.] Only a cause of action that satisfies both parts of the anti-SLAPP statute—i.e., that arises from protected speech or petitioning and lacks even minimal merit—is a SLAPP, subject to being stricken under the statute. [Citation.]” (*Donovan v. Dan Murphy Foundation* (2012) 204 Cal.App.4th 1500, 1505, see also *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.)

In order to satisfy the first prong, Kabbalah Centre was required to establish that the actions arose from an act in furtherance of its protected speech in connection with a public issue. As to both motions, the Centre argued in the trial court that it was sued for its solicitation of funds. It claimed that as a nonprofit religious corporation soliciting funds for its charitable programs, it was engaged in conduct in furtherance of the exercise of protected speech. In order to establish that its speech was in connection with a public issue or issue of public interest, Kabbalah Centre argued that it was a tax-exempt nonprofit organization under section 501(c)(3) of the Internal Revenue Code and that, therefore, its activities concerned a public issue. Alternatively, it argued that the public interest was implicated because: (1) Kabbalah Centre itself is an entity in the public interest; (2) the goal of the Building Fund – acquiring a permanent home for Kabbalah Centre in San Diego – would impact many people in the area; and (3) allegations that a charitable organization in the public eye has committed improprieties with member donations concerns an issue of public interest. Believing it had met its burden on the first prong, Kabbalah Centre then argued that the plaintiffs could not meet their burden of establishing a probability of prevailing.

Plaintiffs opposed the motions, arguing that Kabbalah Centre had not established the first prong, in that their causes of action did not arise from Kabbalah Centre’s charitable solicitation in the abstract, but from the Centre’s breach of contract and fraud, neither of which constitutes protected speech. They further challenged Kabbalah Centre’s arguments that the acts in question were in any way related to the public interest

– arguing that Kabbalah Centre was focusing on whether Kabbalah Centre itself was in the public interest, rather than on whether its promise that the donated funds would be used for the Building Fund was. Each plaintiff then offered evidence attempting to establish a probability of prevailing.

The cases had been assigned to two different judges.⁴ Both trial courts denied the Centre’s anti-SLAPP motions, but on different grounds. The trial court in the Cohen action concluded that Kabbalah Centre had failed to meet its burden on the first prong. It reasoned that Kabbalah Centre had mischaracterized the nature of the Cohen action, stating that it was based on Kabbalah Centre’s constitutional right to solicit donations, when, in actuality, the action was based on breach of contract and fraud. After further analysis, the court concluded the conduct was not protected under the anti-SLAPP statute.

In contrast, the trial court in the Wax action concluded that Kabbalah Centre had met its burden under the first prong, accepting Kabbalah Centre’s argument that the act of soliciting funds for charitable programs constitutes protected speech. The court also agreed that Kabbalah Centre’s conduct concerned a matter of public interest, because Kabbalah Centre’s alleged financial misconduct is a matter of interest to the community at large (or, at least, to the Kabbalah community). However, the court believed Wax had met her burden of establishing a probability of prevailing. So, the trial court denied the Centre’s motion in that case as well.

Kabbalah Centre filed timely notices of appeal from the orders denying its anti-SLAPP motions.

DISCUSSION

1. Standard of Review

We review a trial court’s conclusion on an anti-SLAPP motion de novo, considering the pleadings and the affidavits submitted by each party. (*Donovan v. Dan*

⁴ The record does not reflect why the two lawsuits were not consolidated or deemed related in the trial court.

Murphy Foundation, supra, 204 Cal.App.4th at p. 1506.) The anti-SLAPP statute states that it is to be “construed broadly.” (§ 425.16, subd. (a).)

2. *Overview of Anti-SLAPP Statute*

Section 425.16, subdivision (b)(1) provides: “A cause of action against a person arising from any act of that person in furtherance of the person’s right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.”

As we have earlier observed, on a defendant’s motion under section 425.16, the trial court engages in a two-step process. First, the court decides whether the defendant has demonstrated that the challenged cause of action is one arising from protected activity. If the court finds such a showing has been made, the second prong directs the court to determine whether the plaintiff has demonstrated a probability of prevailing on the claim. (*Equilon Enterprises v. Consumer Cause, Inc., supra*, 29 Cal.4th at p. 67.)

For the first prong, the statute describes four categories of protected activities: “As used in this section, ‘act in furtherance of a person’s right of petition or free speech under the United States or California Constitution in connection with a public issue’ includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.” (§ 425.16, subd. (e).)

We briefly consider the four statutory categories in the context of this case. Kabbalah Centre cannot succeed under the first two provisions – no official proceedings

are at issue. Nor can Kabbalah Centre succeed under the third; many of the conversations relating to the specific donations to be made by Cohen and Wax were made not in public, but during private counseling sessions and other one-on-one meetings. Kabbalah Centre therefore expressly proceeds only under subdivision (e)(4) – that it was sued for conduct in furtherance of the exercise of free speech in connection with a public issue or an issue of public interest.⁵

Satisfaction of the first prong under subdivision (e)(4) requires proof of the following “(1) defendants’ acts underlying the cause of action, and on which the cause of action is based, (2) were acts in furtherance of defendants’ right of petition or free speech (3) in connection with a public issue.” (*Tamkin v. CBS Broadcasting, Inc.* (2011) 193 Cal.App.4th 133, 142-143.) We use this formulation and discuss each element in turn.

3. *Defendant’s Acts: Narrowing the Focus to the Actual Conduct Alleged as Wrongful*

In determining whether the Centre’s conduct as alleged constitutes protected activity, the “definitional focus is not the form of the plaintiff’s cause of action but, rather, the defendant’s activity that gives rise to his or her asserted liability and whether that activity constitutes protected speech or petitioning.” (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 92.) Accordingly, the legal theory of the plaintiff’s claims is not dispositive; instead we must identify the *acts* that form the basis for those claims. (*City*

⁵ Subdivision (e)(4), by its express language, relates to *conduct*, while the other three subdivisions refer to “written or oral statement[s] or writing[s].” Plaintiffs do not argue that subdivision (e)(4) should be read to apply *only* to non-speech conduct although such an argument is consistent with the literal wording of the statute. (Cf. *Castillo v. Pacheco* (2007) 150 Cal.App.4th 242, 250; *Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468, 477.) Multiple cases have, however, applied subdivision (e)(4) to speech, without specifically considering the issue. (E.g., *Integrated Healthcare Holdings, Inc. v. Fitzgibbons* (2006) 140 Cal.App.4th 515, 521-522; *Terry v. Davis Community Church* (2005) 131 Cal.App.4th 1534, 1539, 1545.) Like those cases, we assume, without deciding, that (e)(4) applies to speech.

of *Los Angeles v. Animal Defense League* (2006) 135 Cal.App.4th 606, 620.) Many cases have formulated this inquiry as one into “ ‘the principal thrust or gravamen of the plaintiff’s cause of action.’ ” (*Robles v. Chalilpoyil* (2010) 181 Cal.App.4th 566, 575.) Other courts suggest this standard may be too imprecise and abstract. “The concepts of ‘principal thrust’ and ‘gravamen,’ however, may be too indefinite and abstract to provide a clear rule with predictable results.” (*Old Republic Construction Program Group v. The Boccardo Law Firm, Inc.* (2014) 230 Cal.App.4th 859, 868 (*Old Republic*); see also *Hydro–Mill Co., Inc. v. Hayward, Tilton and Rolapp Ins. Associates, Inc.* (2004) 115 Cal.App.4th 1145, 1153 [cataloguing various tests adopted by appellate courts].)

Old Republic is particularly helpful to our understanding of the conduct that forms the basis of plaintiffs’ claims. In *Old Republic*, the plaintiff alleged multiple causes of action, including breach of contract and fraud. The dispute dealt with the defendants’ withdrawal of trust funds allegedly in violation of a stipulation entered in an underlying personal injury matter. Of relevance to the present appeal, the trial court granted an anti-SLAPP motion as to the fraud claim but not the contract cause of action. The defendants appealed from the denial of the latter. After reviewing the various formulations of the test for determining what is a protective activity, the court settled on the following: “[A] cause of action arises from protected conduct if the *wrongful, injurious act(s)* alleged by the plaintiff constitute protected conduct.” (*Old Republic, supra*, 230 Cal.App.4th at p. 868.) We agree with *Old Republic* and conclude that its test is more helpful to both trial and appellate courts than other formulations. Among other things, the standard provides a necessary corollary: It is not enough that protected conduct is related to defendant’s wrongful activity, or even triggered it, if the injury was not *caused by* the protected conduct. (*Clark v. Mazgani* (2009) 170 Cal.App.4th 1281, 1289-1290 [suit for unlawful eviction in violation of rent control ordinance is not based on the landlord’s unlawful detainer action, although triggered by it].)

The complaint in *Old Republic* contained both fraud and breach of contract causes of action. The parties had executed a stipulation governing the withdrawal of settlement funds, while proceedings in the underlying litigation were ongoing. In considering the

acts that the plaintiff claimed had injured it, the appellate court began by rejecting the notion that the mere fact the plaintiff's claims related to a stipulation in ongoing litigation meant defendants' conduct was necessarily petitioning activity protected under section 425.16, subdivision (e)(2) [issue under consideration or review by a judicial body]. (*Old Republic, supra*, 230 Cal.App.4th at p. 869.)

Instead, the Court of Appeal concluded that the proper approach was to look at the injurious act in each cause of action. The court distinguished the injury suffered by the breach of contract from the injury alleged in the already-dismissed fraud cause of action. "The causes of action at issue here refer to, and may depend on, defendants' having entered into the stipulation, which was itself protected conduct; but they do not assert that there was anything wrongful about that conduct. In this regard the three [contract-related] causes of action now before us differ from the fraud cause of action, as to which the trial court granted the SLAPP motion. As the [trial] court recognized, that cause of action '[arose] from the stipulation.' The underlying wrongful conduct was defendants' alleged entry into the stipulation without the intention to be bound by it, thereby inducing Old Republic to do likewise and depriving it of control over the settlement funds." (*Old Republic, supra*, 230 Cal.App.4th at p. 869.) In contrast to the fraud cause of action where the false representations were contained in the stipulation, the wrongful act in Old Republic's breach of contract cause of action was not the stipulation but the act of improperly withdrawing settlement funds. That act is not protected activity, even though the stipulation could be said to have been incidental to the wrongful act. (*Ibid.*)

Applying the *Old Republic* analysis, we conclude that the causes of action here arise from two separate, allegedly wrongful acts: (1) the fraud causes of action arise from the promises made to plaintiffs that their Building Fund donations would be used for Building Fund purposes – which promises were allegedly false when made; and (2) the contract causes of action arise from Kabbalah Centre's subsequent decision not to use those funds for Building Fund purposes, and to not refund them.

In reaching this conclusion, we necessarily reject the Kabbalah's Centre's contention that because all of plaintiffs' claims arise out of the Centre's charitable

solicitations, that by itself means that the wrongful conduct is protected activity.⁶ We agree that charitable solicitations are generally within the protection of the First Amendment. (*Schaumburg v. Citizens for a Better Environment* (1980) 444 U.S. 620, 632; *Aaron v. Municipal Court* (1977) 73 Cal.App.3d 596, 601.) That conclusion is of little assistance here. Plaintiffs' claims do not deal with charitable solicitations in the abstract. There is no claim, for example, that engaging in charitable solicitations was beyond the power of the Kabbalah Centre or that the manner of soliciting violated local or state law. Plaintiffs do not contend that the Centre should be enjoined from soliciting. To be sure plaintiffs' claims are *related* to the solicitations and may even be said to have been triggered by the Centre's program. (*Clark v. Mazgani, supra*, 170 Cal.App.4th at pp. 1289-1290.) But it is no more convincing to say that the act of soliciting is the wrongful act in the complaint before us than it was for the defendants in *Old Republic* to claim that the stipulation was the wrongful act made in a judicial proceeding and thus was protected.

We next identify the wrongful acts as alleged in each cause of action.

4. *Defendant's Acts: Identifying the Specific Wrongful Conduct Alleged*

Following *Old Republic's* path, we address the breach of contract and fraud claims separately.

A. **The Breach of Contract cause of action.** Kabbalah Centre's argument on the breach of contract claim is that the contract is founded on the assurances made as part of its charitable solicitations and therefore the wrongful act asserted by plaintiffs is the solicitation itself. Essentially, the Centre argues that a breach is not actionable in the absence of an underlying promise. That is undoubtedly true but the Centre's leap from

⁶ For example, the Centre's Opening Brief contains the heading: "Soliciting Charitable Contributions Is Communication Protected by the United States Constitution." Later, the Centre argues: "While not an anti-SLAPP case, the *Village of Schaumburg* case teaches that solicitation for charitable donations is protected speech and not even the legitimate desire to protect the public from fraudulent practice trumps the free speech right." We do not quarrel with these statements. We find that they do not further the inquiry in an anti-SLAPP motion.

that observation to the conclusion that the wrongful act in the breach of contract claim is the promise or the solicitation is made without citation to legal authority, and *Old Republic* is to the contrary. Although the breach of contract causes of action relate to, and even depend on, the promises made in the parties' agreement, plaintiffs' claims do not assert there was anything the wrong with the contract itself; rather, it was the subsequent breaching conduct that was the wrongful act. In this sense, the contract's role is comparable to that of the stipulation in *Old Republic*. There the wrongful act was not the stipulation or promises made therein and here the wrongful act was not the contract nor the promises made in the agreement. Rather the wrongful act was the breach, specifically the failure to use the donations for the construction or acquisition of a building and the failure to return the money. At most, the contract is, in the words of *Old Republic*, "incidental." (*Old Republic, supra*, 230 Cal.App.4th at p. 869.)

B. The fraud cause of action. As to the fraud claim, the wrongful act is not the act of soliciting in the abstract but in the specific promises made to plaintiffs about the use of their donations. That these promises were made as part of a larger solicitation effort does not make soliciting the wrongful act. This can be seen by Wax's declaration, in which she stated, "Whenever we gave a monetary donation . . . I asked and was assured that such donation would be applied to the Building Fund. I made that inquiry and relied upon the answer I was given . . . because my husband Charles had earlier expressed skepticism that the money would actually be used for the stated object of the Building Fund, and I wanted to put his mind at ease by passing along the further assurances I was given by the Kabbalah Centre hierarchy. Thus I made those repeated inquiries in connection with our various donations, and relied upon the responses I received" ⁷

Having determined the wrongful acts of which plaintiffs complain in their causes of action – failure to use the Building Fund donations (breach of contract) and false

⁷ While Cohen does not specifically testify to a separate promise, it is nonetheless the equivalent promise alone, not the charitable solicitation in general, that forms the basis of her fraud causes of action.

representations made about the Building Fund donations (fraud) – we now turn to whether those acts are protected conduct under the anti-SLAPP statute. As did the Court of Appeal in *Old Republic*, we analyze the contract and fraud causes of action separately.

5. *The Wrongful Acts in the Breach of Contract Causes of Action Were not in Furtherance of the Centre’s Free Speech Rights within the Anti-SLAPP Statute*

The second inquiry in a section 425.16, subdivision (e)(4) motion is whether the act complained of was in furtherance of the defendant’s free speech rights. (*Tamkin v. CBS Broadcasting, supra*, 193 Cal.App.4th at pp. 142-145.) We conclude the injurious acts in the breach of contract claims are not acts in furtherance of the Centre’s right of free speech. The wrongful act is the breach of the contract between the parties – Kabbalah Centre’s *decision* not to build or purchase a building and not to refund plaintiffs’ Building Fund contributions. That is the “wrongful injurious act” under *Old Republic*. This act or forbearance itself was not an act in furtherance of Kabbalah Centre’s speech rights, and Kabbalah Centre does not attempt to argue that it was. Indeed, while Kabbalah Centre states that it used the Building Fund donations for other Kabbalah Centre purposes, it does not argue that it used the Building Fund donations for other *free speech* purposes, and that, therefore, diverting the money itself was somehow an act in furtherance of its rights of free speech. The Centre’s alleged breach was not an act in furtherance of its free speech rights, and the anti-SLAPP motions were therefore properly denied with respect to those causes of action.

6. *The Wrongful Acts in the Fraud Causes of Action Were not in Furtherance of Free Speech Rights within the Anti-SLAPP Statute*

As to the fraud causes of action, the analysis is different and more complex. “An act is in furtherance of the right of free speech if the act helps to advance that right or assists in the exercise of that right.” (*Tamkin v. CBS Broadcasting, Inc., supra*, 193 Cal.App.4th at p. 143.) The fraud causes of action are based on the promise the Building Fund donations would be used only for the Building Fund. This promise was made in the context of Kabbalah Centre’s solicitation of donations. Charitable solicitations are within the protection of the First Amendment. (*Schaumburg v. Citizens*

for Better Environment, supra, 444 U.S. at p. 632; *Aaron v. Municipal Court, supra*, 73 Cal.App.3d at p. 601.) The promise that solicited funds would be used only for the Building Fund assisted in Kabbalah Centre’s exercise of its free speech right to solicit for charitable purposes. Thus, the wrongful act in the fraud cause of action satisfies the first element of section 425.16, subdivision (e)(4) that the conduct must be “in furtherance . . . of the right to free speech.” We therefore proceed to whether the conduct alleged in the fraud causes of action was “in connection with a public issue or an issue of public interest.” This is the third inquiry stated in *Tamkin, supra*, at pages 142-143.

Case law suggests three general categories of cases that meet the public issue/public interest element of subdivision (e)(4): “ ‘(1) The subject of the statement or activity precipitating the claim was a person or entity in the public eye. [Citations.] [¶] (2) The statement or activity precipitating the claim involved conduct that could affect large numbers of people beyond the direct participants. [Citations.] [¶] (3) The statement or activity precipitating the claim involved a topic of widespread public interest. [Citations.]’ [Citation.]” (*Integrated Healthcare Holdings, Inc. v. Fitzgibbons, supra*, 140 Cal.App.4th at p. 525.) As to the third category, if the speech is connected with an issue of interest only to a more limited but definable portion of the public, the statement is only protected if it was “in the context of an ongoing controversy, debate or discussion within that community.”⁸ (*Du Charme v. International Brotherhood of Electrical Workers* (2003) 110 Cal.App.4th 107, 118.)

We consider each of these categories: First, is the subject of the statement or activity precipitating the claim a person or entity in the public eye? No. The statement precipitating the fraud claims was Kabbalah Centre’s promise that plaintiffs’ donations

⁸ The Sixth District Court of Appeal, in dicta, questioned the rationale of this gloss, but recognized that it has been “uncritically accepted.” (*Cross v. Cooper* (2011) 197 Cal.App.4th 357, 381.) The parties do not address the controversy. We agree that the rule has been widely accepted. (E.g., *Integrated Healthcare Holdings, Inc. v. Fitzgibbons, supra*, 140 Cal.App.4th at p. 524; *Terry v. Davis Community Church, supra*, 131 Cal.App.4th at pp. 1549-1550.) In the absence of any argument to the contrary, we apply it.

would be used for the Building Fund. Kabbalah Centre represents that it, itself, is in the public interest, and argues that its operations are therefore an issue of public interest. But the statement at issue was not a general statement about Kabbalah Centre or its operations; it was simply a promise made *by* Kabbalah Centre to two (or more) donors.⁹

Second, does the statement or activity precipitating the claim involve conduct that could affect large numbers of people beyond the direct participants? No. The statement was a specific promise regarding the donations by plaintiffs; even if similar statements were made to other Kabbalah Centre Building Fund donors, there is no evidence that their number is particularly large. To the extent Kabbalah Centre argues that large numbers could be affected by the conduct at issue because the Centre, as a charitable organization, may affect large numbers of people, that point was expressly rejected in *Donovan v. Dan Murphy Foundation, supra*, 204 Cal.App.4th at page 1509. In any event, the statement underlying the fraud causes of action is a simple promise that certain donors' contributions would go only to the Building Fund and to no other Kabbalah Centre purposes. The only people affected by this promise are the donors and Kabbalah Centre itself.

Third, did the statement or activity precipitating the claim involve a topic of widespread public interest? And if it was of interest only to a limited but definable

⁹ At oral argument on appeal, the Centre relied on *Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 650-651, disapproved on other grounds by *Equilon Enterprises v. Consumer Cause, Inc., supra*, 29 Cal.4th 53, for the proposition that matters of public interest may include activities of large religious organizations in the public eye. But *Wollersheim* is distinguishable. There, the action subject to an anti-SLAPP motion was itself challenging a prior lawsuit against the Church of Scientology. In other words, the action arose out of petitioning activity (the prior lawsuit) the subject of which was the Church's practices – which were a matter of public interest. In contrast, Kabbalah Centre's anti-SLAPP motions are directed at actions challenging promises made to two individuals by the Centre. Speech or petitioning activity *about* a large religious organization in the public eye may well be in the public interest; speech *by* such an organization is not necessarily and is not here when the speech itself was not about the organization, but was merely a promise privately made.

portion of the public, was it in the context of an ongoing controversy, debate or discussion within that community? No and no. As stated above, the people principally interested in the promise at issue were the promisor (Kabbalah Centre) and the promisees (Cohen and Wax). To the extent the Centre argues that its charitable solicitation activities render the issue one of widespread public interest, *Donovan* again controls. There, the defendant foundation relied “solely on the fact that the Foundation is one of the largest charitable organizations in Southern California, subject to public oversight by the Attorney General, and that it donates a substantial amount of money every year to persons and entities that affect millions of Southern Californians. None of these facts, standing alone or taken together, would transform a private disagreement among directors of the Foundation into a public issue or an issue of public interest.” (*Donovan v. Dan Murphy Foundation, supra*, 204 Cal.App.4th at p. 1509.) Even if we were to conclude that the promise regarding Building Fund donations involved a topic of interest to the more limited larger Kabbalah Centre community, the promise was not in the context of an ongoing controversy, debate or discussion. There was no evidence, for example, that the Kabbalah Centre’s community was split over whether donations to the Building Fund should be limited or unrestricted, and that Kabbalah Centre added its voice to the debate by agreeing to limit plaintiffs’ donations to the Building Fund.

Kabbalah Centre’s arguments that its acts fall within the public issue/public interest categories are based on its misapprehension of the act on which the fraud causes of action are based. The Centre takes the position that it is being sued for its acts of charitable solicitation for the Building Fund, and then argues that such acts – involving the solicitation by a registered 501(c)(3) charity, for hundreds of thousands of dollars of donations, for the construction or purchase of a building that would spread spiritual teaching to the whole San Diego community – is a matter of public interest. Properly understood, Kabbalah Centre is being sued for a promise it made in the context of its charitable solicitations, not for the solicitations themselves.

Finally, we note that the purpose of the anti-SLAPP statute is to halt, at an early stage of litigation, “lawsuits brought primarily to chill the valid exercise of the

constitutional rights of freedom of speech and petition for the redress of grievances.” (§ 425.16, subd. (a).) While it is true that a defendant need not establish the plaintiff’s *purpose* in bringing the action was to chill its speech (*Damon v. Ocean Hills Journalism Club, supra*, 85 Cal.App.4th at p. 480), we cannot help but notice that there is not even a hint of speech-chilling in this action. Plaintiffs are not, in any way, challenging Kabbalah Centre’s right to solicit funds for its charitable purposes; they are instead arguing that if the Centre makes a promise that it will use donated funds for a specific purpose, it must do so or give the money back. Charitable solicitation is protected by the First Amendment; alleged fraud is not. (*Schaumburg v. Citizens for Better Environment, supra*, 444 U.S. at p. 637.)

DISPOSITION

We agree with both the ruling and its rationale in *Cohen*. As to *Wax*, while we disagree with the rationale of the trial court’s order, the ruling was nevertheless correct. Accordingly, the orders denying Kabbalah Centre’s anti-SLAPP motions in both *Cohen* and *Wax* are affirmed. Kabbalah Centre is to pay plaintiffs’ costs on appeal.

RUBIN, ACTING P. J.

WE CONCUR:

FLIER, J.

GRIMES, J.